

November 4, 2002

By Electronic Delivery

Marlene H. Dortch, Secretary
Federal Communications Commission
445-12th Street, S.W.
Washington, DC 20554

Ex Parte Notice

**Re: Applications for Consent to the Transfer of Control of Licenses
from Comcast Corporation and AT&T Corp., Transferors, to
AT&T Comcast Corporation, Transferee, MB Docket No. 02-70**

Dear Ms. Dortch:

This letter reports on an ex parte meeting and also provides additional information requested by Commission staff at that meeting. On Friday, November 1, representatives of AT&T Corp. ("AT&T") and Comcast Corporation ("Comcast") met with Simon Willkie, Chief Economist, and Royce Sherlock, Chief of the Media Bureau's Industry Analysis Division. AT&T was represented by Michael Hammer of Willkie, Farr & Gallagher. Comcast was represented by James R. Coltharp, Senior Director, Public Policy, Comcast, and James L. Casserly of Mintz Levin.

In response to questions, the AT&T and Comcast representatives stated that a list of all of their programming contracts with exclusivity provisions had been filed by applicants on July 2 as part of their response to the Media Bureau's June 11 document and information request. The details of those agreements are specified in Attachments 9-25 (all filed under the confidentiality provisions of the Protective Order) of the July 2 filing, in response to question B.4.

The AT&T and Comcast representatives also agreed to provide additional information about the geographic markets served by their affiliated regional sports networks, the total number of subscribers that receive such networks, and the number of those subscribers that receive the networks through cable systems owned by AT&T and Comcast. Applicants will file this information under separate cover.

The AT&T and Comcast representatives pointed out in the meeting that the vast majority of regional sports networks are not owned, in whole or in part, by either AT&T

or Comcast. Attached is a list taken from a recent article in Cable World, indicating that there are 24 major regional sports networks. The Commission's most recent video competition report lists 28 regional sports networks.¹ By contrast, AT&T and Comcast are attributed with ownership interests in only four regional sports networks.²

Specifically, AT&T owns a 50% interest in Fox Sports New England, although that network is managed by Fox.^{3/} Comcast owns controlling interests in Comcast SportsNet Mid-Atlantic, Comcast SportsNet (Philadelphia), and Comcast Sports Southeast (in which Charter Communications also holds an interest). All of these affiliated regional sports networks, except for Comcast SportsNet (Philadelphia), are delivered by satellite and subject to the program access rules. Comcast SportsNet (Philadelphia) is not subject to the program access rules,⁴ but Comcast, nonetheless, makes it available to all of the entities listed in Attachment 4 to the Applicants' July 2 submission (filed under the confidentiality provisions of the Protective Order). Of particular note, Comcast has made this service available, at all times since its inception, to all of its terrestrial competitors, including RCN, Popvision, and (while it was operational) Bell Atlantic's video dialtone business.

As a general rule, economic and technical considerations tend to favor use of satellites rather than terrestrial technologies in delivering video programming. This is so even for sports networks that are distributed regionally rather than nationally. That satellite delivery is the preferred mechanism for the delivery of regional sports

¹ *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 17 FCC Rcd 11579, at Table D-3 (2002). Note that this list includes one regional network that was counted twice (Home Team Sports, having been acquired by Comcast, was renamed Comcast SportsNet Mid-Atlantic). In addition, the list excludes a recently launched regional sports network, the YES Network.

² The Applicants have previously noted that they collectively hold very modest programming interests. AT&T Comcast will have attributable ownership interests in a total of 25 video programming networks, or 6.6% of the 374 total national and regional services listed in the Commission's *2001 Video Competition Report*. In comparison, the Commission's *2000 Video Competition Report* attributed to AT&T Broadband (after its merger with MediaOne) ownership interests in 97 (or 27%) of the 356 national and regional programming services listed in that report. See Reply to Comments and Petitions to Deny Applications for Consent to Transfer Control, MB Docket 02-70, at 99 n.301 (May 21, 2002) ("Reply Comments").

^{3/} AT&T therefore lacks management control over Fox Sports New England. We also note that, after review of the record and internal consultations, applicants can now clarify that AT&T's prior interest in The Sunshine Network (Florida) has been sold.

⁴ *DIRECTV, Inc. and EchoStar Communications Corp. v. Comcast Corp.*, 15 F.C.C. Rcd. 22802 (2000), *aff'd* 292 F.3d 749 (2002).

programming is confirmed by the fact that virtually every regional sports network of consequence is delivered via satellite. The only exception to this general rule of which Applicants are aware is Comcast SportsNet (Philadelphia).

Comcast's decision to use terrestrial delivery for that one service was the product of a unique combination of circumstances. Specifically, at the time that Comcast acquired two Philadelphia professional sports teams, the Philadelphia Flyers and the Philadelphia 76ers, it also acquired the rights to distribute their games. At that time, a third party, Prism Sports Channel Associates, operated two programming networks in the Philadelphia area. One of these networks, Prism, distributed its programming to MVPDs terrestrially. When Prism subsequently went out of business, the microwave and fiber optic facilities it had previously used to deliver programming became available for Comcast's use. The area served by Comcast SportsNet (Philadelphia) is well-suited to the use of terrestrial technologies for distributing regional programming, because it is a much smaller geographic area (covering only eastern Pennsylvania, southern New Jersey, and Delaware) than the areas typically served by regional networks. The Comcast SportsNet (Philadelphia) service territory is bounded immediately to the north by the New York DMA and to the south by the Baltimore/Washington, D.C. DMA.

Because Comcast SportsNet was delivered only to about 60 cable and other headends, Comcast was able to use the existing network of microwave and fiber optic facilities to distribute the programming terrestrially at a cost of approximately \$600,000 per year. At that time, even a second-tier satellite transponder would have cost more than twice that amount. Further, Comcast would have had to incur the \$250,000 expense of building an earth station uplink facility in addition to spending approximately \$24,000 per year in uplinking expenses.

All of the facts discussed in the preceding two paragraphs are drawn from pleadings filed with the Commission in conjunction with two program access complaints, both of which were rejected – by the Cable Services Bureau, by the Commission, and by the U.S. Court of Appeals for the D.C. Circuit.⁵ Those pleadings also discuss the considerable benefits that have accrued to sports fans in the Philadelphia region, including access to games of teams that were never before available, Comcast's decision to return many of the teams' games to free, over-the-air television (they had been withdrawn from over-the-air broadcasts by the previous owners of the distribution rights), and superb, award-winning, locally produced original programming.

In general, however, given current technology and economics, regional sports networks are delivered by satellite. This practice does not appear to be affected by the presence of cable clusters. There are dozens of large regional cable clusters owned by a variety of cable operators and yet, to our knowledge, all major regional sports networks

⁵ The relevant facts were summarized in the Bureau decisions. See *DIRECTV, Inc. v. Comcast Corporation*, 13 FCC Rcd 21822, ¶ 28 (Cable Serv. Bureau 1998) (subsequent history omitted).

with the exception of one are delivered by satellite. If the presence of cable clusters created incentives for owners of regional sports networks to use terrestrial rather than satellite delivery, there plainly would be some evidence of that in the marketplace, but satellite delivery remains the norm. This is true even where the regional sports networks are affiliated with cable operators.⁶ Fox Sports New England, Comcast SportsNet Mid-Atlantic, and Comcast Sports Southeast are good examples of regional sports networks that are affiliated with cable operators and are delivered by satellite.⁷

Moreover, even if there were evidence that cable clusters increased the incentive to deliver regional sports networks terrestrially -- which there is not -- that would not be relevant to the instant merger application. As Applicants have repeatedly demonstrated in the record of this proceeding, the proposed merger will not lead to any significant increase in clustering.⁸ Finally, even in the event that a regional sports network would wish to consider changing from satellite to terrestrial delivery, it would be bound to honor existing contracts with all MVPDs. Many of those contracts are long-term contracts.

In sum, there has been speculation for nearly a decade that satellite-delivered regional sports programming would be moved to terrestrial distribution networks. The fact is that change has not occurred and nothing about this proposed merger would affect the likelihood that such a change will occur.

Applicants also note that there are a number of competitive alternatives to regional sports networks. Of course, broadcasters carry a great deal of sports programming, including numerous games of teams whose games are also carried on the regional sports networks.⁹ Consumers can also obtain vast amounts of sports

⁶ League rules prohibit any given cable company from controlling more than one team in any sports league.

⁷ It should also be noted that the geographic areas served by regional sports networks tend to be larger than any cable cluster. For example, the area served by Fox Sports New England spans multiple states. Consequently, satellite distribution likely would generally be a more efficient method of delivering programming to multiple termination points than a terrestrial technology. In contrast, as noted, Comcast SportsNet (Philadelphia) serves a relatively small geographic area, bounded by the New York DMA to the north and the Baltimore/Washington D.C. DMA to the south.

⁸ *Reply Comments* at 112 (May 21, 2002); Response of AT&T Corp. and Comcast Corporation to June 11, 2002 Document and Information Request, MB Docket No. 02-70, at B.1. (includes information filed under the confidentiality provisions of the Protective Order) (July 2, 2002).

⁹ As noted above, after Comcast purchased the Philadelphia 76ers and Flyers, it returned to broadcast television a number of games that, because of the decisions of the prior rights' owners, previously were available only through MVPD services. Several

programming from the two nationwide DBS providers. For example, DirecTV offers packages of professional sports games, including Sunday Ticket (NFL), League Pass (NBA), MLB Extra Innings (Major League Baseball), NHL Center Ice (NHL), MLS Shootout (soccer), English Premiere League (soccer), ESPN Game Plan (college football), and ESPN Full Court (college basketball). DirecTV also offers numerous sports channels including 18 regional Fox Sports networks (including Fox Sports New England), Fox Sports World (soccer), The Golf Channel, NBA TV, The Outdoor Channel, Comcast SportsNet (Mid-Atlantic), Empire Sports Network, Madison Square Garden Network, New England Sports Network, Sunshine Network, YES Network, ESPN, ESPN 2, ESPN Classic, and ESPN News. In addition, DirecTV offers a number of networks that include substantial amounts of sports programming, including Speed Channel, TBS Superstation, TNT, USA Network, and WGN Superstation. EchoStar's Dish Network has a similarly extensive list of sports programming, including the Fox regional sports channels (including Fox Sports New England), the ESPN networks, Comcast SportsNet (Mid-Atlantic), Empire Sports Network, Madison Square Garden Network, New England Sports Network, Sunshine Network, The Golf Channel, The Outdoor Channel, and numerous pay-per-view sports options. In addition, it appears that both DirecTV and EchoStar have entered into carriage agreements for the new NBA Channel, slated to launch in January 2003.

In addition, in a number of areas, there is more than one regional sports network. For example, portions of the area served by Fox Sports New England is also served by Madison Square Garden Network ("MSG"), YES Network and New England Sports Network, and portions of the area served by Comcast Sports Southeast is also served by Fox Sports South and Turner South. Some of the area served by Comcast SportsNet (Philadelphia) is also served by MSG.

Pursuant to section 1.1206(b) of the Commission's rules, this letter is being filed electronically with the Office of the Secretary. If you have any questions please contact us.

Respectfully submitted,

/s/ Betsy J. Brady
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/s/ James R. Coltharp
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dozen games of the Phillies, Flyers, and Sixers are carried each year in Philadelphia on broadcast television, through the Philadelphia UPN affiliate, WPSG. Curiously, the DBS companies chose not to offer this station and its local sports programming to consumers until the "carry-one, carry-all" provisions of SHVIA became effective. *See Reply Comments* at 103 n.314.

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What's Playing in the Regions

ACTION SPORTS CABLE NETWORK

SPORT	TEAMS	# OF GAMES
NBA	Portland Trail Blazers	27
NCAA	U. of Portland	6 men's, 6 women's
	Portland State	5 m, 5 w
	U. of Oregon	8

Still no deal with AT&T Broadband in Portland, leaving Blazers fans in the dark for much of the season.

COMCAST SPORTSNET MID-ATLANTIC

NBA	Washington Wizards	53
NHL	Washington Capitals	57
NCAA	ACC	36 m, 35 w
	CAA	13 m, 5 w
	A-10	TBA
	MEAC	TBA

Also runs Wizards Post Game Live. Adding late-night SportsNite (re-airs as Sports-Rise in the morning). HDTV coverage on select games begins 1Q '03.

COMCAST SPORTSNET PHILADELPHIA

NBA	Philadelphia 76ers	64
NHL	Philadelphia Flyers	64
NCAA Basketball	A10	22 m, 7 w
	ACC, ERT/Misc.	10
	PAC-10	9
	CAA	6 m, 1 w

HDTV coverage on select games begins 1Q '03.

EMPIRE SPORTS NETWORK

NHL	Buffalo Sabres	74
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FSN ARIZONA

NHL	Phoenix Coyotes	60
NCAA Basketball	U. of Arizona	12 m, 3 w
	Arizona State U	8 m, 4 w
	Pac 10	32 m, 17 w
	Pac 10 Tourn.	6 m, 3 w

Also runs Prowlin' With the Wildcats and Runnin' With the Sun Devils.

FSN BAY AREA

NBA	Golden State Warriors	60
	Sacramento Kings	25
NHL	San Jose Sharks	67
NCAA Basketball	Pac-10	38 m, 20 w
	Big-12	10 w

Also runs Warriors Roundtable, Shark Byte and Cal Sports Magazine.

FSN CHICAGO

NBA	Chicago Bulls	44
NHL	Chicago Blackhawks	39
NCAA Basketball	Horizon League	8
	Missouri Valley	17 m, 5 w
	Mid-Continent	5 m, 1 w
	Mid-American	2 m
	Big Ten	22 w
	Conference USA	3 w

Also runs Full Access weekly magazine show covering Chicago pro teams.

FSN DETROIT

NBA	Detroit Pistons	38
NHL	Detroit Red Wings	42
NCAA Hockey	CCHA; Tournament	13; 4

Also runs weekly Pistons, Red Wings and CCHA shows.

FSN FLORIDA

NHL	Florida Panthers	75
NCAA Basketball	Miami	10 m, 6 w
	South Florida	7-8 m, 3 w
	Big East	5
	ESPN Regional	20

Also runs Hurricane Game Day and The Seth Greenberg Show.

FSN MIDWEST

SPORT	TEAMS	# OF GAMES
NBA	Indiana Pacers	40
NHL	St. Louis Blues	40
NCAA Basketball	Missouri	12 m, 3 w
	Big 12	25 w
	Mid-Continent	6 m, 1 w
	Horizon League	4 m
	Missouri Valley	19 m, 7 w

Also runs Pacers GameNight, Pacers Post-Game, Blues Monthly and Blues Face-Off. Owns and produces 25 over-the-air Blues games.

FSN NEW ENGLAND

NBA	Boston Celtics	74
NCAA Basketball	Big East	8 w
NCAA Hockey	Boston U.	10
	Hockey East	15

FSN NEW YORK

NBA	New York Knicks	2
NHL	NY Rangers	2
	NY Islanders	50
	NJ Devils	54

Steinbrenner's claim to the Nets left FSNNY without a major hoops presence.

FSN NORTH

NBA	Minn. Timberwolves	35
	Milwaukee Bucks	36
NHL	Minnesota Wild	45
NCAA Basketball	Marquette	3
	U. of Wisconsin	6 m, 5 w
	U. of Minnesota	TBA
NCAA Hockey	U. of Minnesota	35
	U. of Wisconsin	20

FSN NORTHWEST

NCAA Basketball	Pac 10	14 m, 4 w
	West Coast	2 m

Also running On Campus with the Beavers, Cougars and Huskies.

FSN OHIO

NBA	Cleveland Cavs	40
NHL	Columbus Blue Jackets	65
NCAA	Xavier M	10

Also runs Ice Breaker, a 30-minute pregame show for Blue Jackets.

FSN PITTSBURGH

NHL	Pittsburgh Penguins	66
NCAA Basketball	Pittsburgh	9 m
	West Virginia	3 m, 1 w
	Penn State	6 m, 10 w
	Atlantic 10	18 m
	Duquesne	6 m
	Mid-American	11 m, 3 w

FSN ROCKY MOUNTAIN

NBA	Denver Nuggets	60
	Utah Jazz	27
NHL	Colorado Avalanche	55
ML Hockey	Utah Grizzlies	5
NCAA Basketball	Denver 4	1 m, 1 w
	Pac 10	34 m, 5 w
	Big 12	25 w
	Misc. Div. I	4
NCAA Hockey	Denver	9
	Colorado College	3
Lacrosse	Denver	3

Also runs Big 12 Showcase weekly during NCAA season.

FSN SOUTH

SPORT	TEAMS	# OF GAMES
NBA	Atlanta Hawks	30
	Memphis Grizzlies	25
NHL	Carolina Hurricanes	55
	Nashville Predators	60
NCAA Basketball	SEC	45 m, 22 w
	ACC	25 m, 27 w
	Southern	7 m
	Ohio Valley	4 m, 1 w
	Colonial Athletic	3 m
	Big South	2 m
	Atlantic Sun	2 m, 1 w

Also runs SEC-TV and ACC Live weekly.

FSN SOUTHWEST

NBA	Dallas Mavericks	42
	San Antonio Spurs	33
	Houston Rockets	in negotiations
NHL	Dallas Stars	40
NCAA Basketball	Texas Baylor, Texas A&M	5
	Big 12	2 w
	Western Athletic	6 m, 4 w
	Southland	up to 5 m

FSN WEST

NBA	LA Lakers	35
NHL	LA Kings	65

FSN WEST 2

NHL	Anaheim Mighty Ducks	40
Basketball	ACC	19 m
	PAC-10	44 m

Running Beach Poly on Saturday, Oct. 12, at 7 p.m.

MSG

NBA	New York Knicks	71
NHL	NY Rangers	61
	NY Islanders	5
	NJ Devils	2
NCAA Basketball	MAAC	19 m, 7 w
	Big East	20 m, 10 w
	Hofstra	8 m, 2 w
	Big 12	2 m
	American East	6 m, 3 w
	A-10	34 m, 1 w
	NEC	13 m, 1 w
	Patriot League	2 m
	CAA	13 m, 1 w
NCAA Hockey	TBA	1
AHL	Hartford WolfPack	2

SUNSHINE NETWORK (FLORIDA)

NBA	Miami Heat	44
	Orlando Magic	42
NHL	Tampa Bay Lightning	60
NCAA Basketball	Florida State	15 m, 10 w
	ACC	10 m, 20 w
	Florida	5 m, 10 w
	SEC	40 m, 20 w
	Atlantic Sun	6 m, 1 w
	Sunshine State	5 m, 5 w

Also runs Pre-Heat, Magic Tonight, Toyota Lightning Ice Time pregame shows, plus NCAA coaches shows for men and women.

YES

NBA	New Jersey Nets	73
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First NBA season for the network. With cablevision still saying no to YES, Nets fans who subscribe to the MSG-like Yankees fans—miss out.